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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,195	09/17/2003	Todd M. Bjork	M81.12-0068	3894

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EXAMINER

RAMANA, ANURADHA

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/664,195

Applicant(s)

BJORK ET AL

Examiner

Anu Ramana

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 and 27-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-10, 15, 17-25 and 27-30 is/are rejected.
- 7) ☒ Claim(s) 4-7, 11-14, 16 and 31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/22/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of Species I (Figures 1-3) in the reply filed on October 25, 2004 is acknowledged.

### ***Claim Objections***

Claims 3 and 24-31 are objected to because of the following informalities.

In claim 3, line 3, "the first position" and "the second position" should be "a first position" and "a second position" for clarity.

Two claims have the same number, 24. The Applicants are required to number the claims correctly in the response to this Office Action. For purposes of examination, the Examiner is numbering all claims in numerical order. Thus, claims following the first claim numbered 24 will be referred to as claims 25-32 instead of 24-31.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 8-10, 15, 17, 19, 21-25 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Farley et al. (US 6,033,363).

Farley et al. disclose a surgical joint 21 including a first clamping member 52, a second clamping member 54, a shaft 56 disposed through an attachment end of first clamping member 52 and communicating with the second clamping member and a

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wedge member or "actuating mechanism" or "force providing mechanism" 60 disposed about shaft 56 to ensure adequate constriction of each clamping member and a cam lever or "handle" 58 attached to the actuating mechanism (Figures 3 and 6, col. 2, lines 49-67 and col. 3, lines 1-41).

Claims 15 and 17-25 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Dobrovolny (US 5,727,899).

Regarding claims 15 and 17-19, Dobrovolny discloses a clamping member with a clamping portion 150, first and second leg portions 160, 162, a wedge 164 disposed between the first and second leg portions and a handle 120 attached to wedge 164 (Fig. 4 and col. 4, lines 34-49).

Regarding claims 20-27, Dobrovolny further discloses that clamping portion 150 can have a clamping member 12 rotatably attached to clamping portion 150 wherein the clamping member is positioned in a clamping position by movement of the wedge about the fulcrum (Fig. 2).

Claims 28-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Phillips (US 2003/0191370A1).

Phillips discloses a clamp having a pin 20 extending through the clamp member into a clamping cavity, an activating mechanism 28 that biases pin 20 into the clamping cavity and a wedge member 40 that is used to apply a force to pin 20 (Fig. 2, paras [0017] - [0020]).

### ***Allowable Subject Matter***

Claims 4-7, 11-14, 16 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached at (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR *Anu Ramana*  
December 31, 2004

*Todd E. Matlack*  
Todd E. Matlack  
Primary Examiner